

DRUG-FREE: WAY TO BE

IN

ALABAMA

A Step-by-Step Guide
To a Drug-Free Workplace



**DEPARTMENT OF INDUSTRIAL RELATIONS
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DISCLAIMER

This Guide has been developed as an informational tool for use by employers. The employer should consult with his or her legal staff or attorney prior to the implementation of any formal policies or procedures for application to that employer's business. The Department of Industrial Relations does not assume any liability resulting from the use of all or any part of this Guide.

T O U G H Q U E S T I O N S

Q Is substance abuse a major issue for American business and labor?

A Yes!

The Problem of Illegal Drugs

- 60% of the world's production of illegal drugs is consumed in the U.S.
- Nearly 70% of current users of illegal drugs are employed.
- 1/3rd of employees know of the sale of drugs in their workplace.
- 20% of young workers admit using marijuana on the job.

Nearly 1 in 4 *employed* Americans between the ages of 18-35 have used illegal drugs in the past year. Ninety percent (90%) of large businesses have drug-free workplace programs in place, while only 5 to 10% of small and medium sized businesses have implemented similar programs. The irony here is that about 75% of employed Americans work for these small and medium sized businesses. Workers who want to avoid substance abuse policies at the large companies take their job search to the smaller businesses, and that's where they are today!

The Cost of Substance Abuse

Even though many employers choose to ignore the problem, substance abuse in the workplace has a real impact on their bottom line. As a matter of fact, substance abuse drains more than \$100 billion from American businesses every year in . . .

- **WORKERS' COMPENSATION:** 38 to 50% of all workers' compensation claims are related to substance abuse in the workplace; substance abusers file twice as many workers' compensation claims.
- **MEDICAL COSTS:** Substance abusers have 300% higher medical costs and benefits.
- **ABSENTEEISM:** Substance abusers are 2.5 times more likely to be absent eight or more days a year.
- **LOST PRODUCTIVITY:** Substance abusers are 1/3rd less productive.
- **EMPLOYEE TURNOVER:** It costs a business an average of \$7000 to replace a salaried worker.

Companies are finding that investment in education, prevention, and assistance programs pays dividends for both employer and employee.

Source: "Working Partners," National Conference Proceedings Report: Sponsored by the U.S. Department of Labor, the Small Business Administration, and the Office of National Drug Control Policy.

Q Can you make a difference?

A Yes!

It's Not Difficult. Model policies and programs are available. Some sample forms are in this booklet.

It's Not Expensive. Using existing materials, you can get started at virtually no cost. If you want to develop a comprehensive program to include employee assistance, supervisor training, employee education and/or testing, contact the State of Alabama, Department of Industrial Relations, Workers' Compensation Division.

You don't have to do it alone. There are a variety of resources available to assist you including the national and state organizations listed on page 19 of this booklet.

T A K E - C H A R G E A N S W E R S

Q

How can I make my workplace drug-free?

A

Begin with careful planning.

- **Develop your drug-free workplace program carefully.**

Talk to employees and supervisors about the benefits of a drug-free workplace.

Stress the positive aspects of a drug-free workplace, i.e., management and workers meeting their joint responsibilities for a safe and healthy workplace. Case studies show a well-planned program to reduce substance abuse can increase productivity, reduce accidents, and decrease costs due to insurance claims.

Listen to employees' ideas.

Ask for input: "We're going to implement a drug-free workplace program. What is the best way to do this?" Compliance with any change in company policy requires the understanding and acceptance of the employees. If your company's workers are represented by a union, the development of the policy will be a part of the collective bargaining process. A firm, compassionate program can provide a healthy and safe workplace for all.

- **Consider the resources available and decide if you wish to offer a more comprehensive program including:**

- An employee assistance program (EAP)
- Training for supervisors
- Education/awareness for employees
- A drug-testing program

- **Write your policy and print it on company letterhead.**

The policy should expressly prohibit the illegal use of drugs and abuse of alcohol by employees and spell out the consequences of policy violations. Model policies are printed in this booklet. You may duplicate the policy word for word, customizing it with your company's name, or you may change portions of it to suit your specific needs. You may wish to consult your company's attorney for assistance, and possible legal ramifications.

Q

Once I've planned my program, how do I implement it?

A

Take these important steps.

1. **Distribute the policy to all employees.**
2. **Educate your employees about the program.**

Hold a meeting for all employees, labor and management, to explain the value of the drug-free workplace. Answer all questions and make yourself available to meet privately with employees.
3. **Post notifications of your drug-free workplace program. Give notice well in advance of policy implementation.**

Place notices in prominent locations throughout your business facilities as well as on your employment applications. New employees must be given a copy of your drug-free workplace policy.

Q**When should performance of duties be prohibited?****A****Performance of duties should be prohibited for any of the following reasons:**

- While having an alcohol concentration of 0.04 or greater as indicated by an alcohol breath test, if performing safety-sensitive functions or 0.08, if performing non-safety sensitive functions.
- While using alcohol.
- Within four hours after using alcohol for safety-sensitive functions.

Q**What is a safety-sensitive function?****A****Sensitive positions from a safety, health or security standpoint versus all other job applicants for non-sensitive positions.**

- Sensitive positions as determined by law usually include positions that involve national security; health; safety; functions that require a high degree of trust and confidence; operation of company vehicles, machinery, or equipment (the mishandling of which may place fellow employees or the general public at risk of serious injury, or the nature of which would create a security risk in the workplace); the handling of hazardous material.

Q**Could refusing to submit to an alcohol test be presumed as exceeding the limits?****A****Yes.**

- Refusing to submit to an alcohol test or use of alcohol within eight hours after an accident or until tested may be considered presumption of exceeding the limits.

Q**What types of drugs are prohibited?****A****The following types of drugs are prohibited.**

- Drugs that are considered an illegal substance.
- A controlled substance that is not medically authorized or prescribed for the employee being tested.
- Legally prescribed controlled substances whose use is prohibited during the performance of duties by the employer's policies.
- Alcohol consumption during or prior to work (in accordance with permissible limits and company policy).
-

Q

When an employee/applicant is drug tested, is the employer required to utilize a Medical Review Officer (MRO)?

A

Yes

- The Administrative Rules define a Medical Review Officer as a licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by an employer's drug testing program, who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an employee's confirmed positive test result together with his or her medical history and any other relevant biomedical information. The MRO shall be an agent of the employer. The MRO should be used to review all positive tests with the employee or applicant before the employer is advised of the test results. Using an MRO helps to protect both the employer and the employee.

Q

Could there be legal challenges?

A

Yes

- The United States Constitution, which restricts governmental but not private sectors from arbitrarily interfering with individual rights, prohibits the Government from unreasonably infringing on workers' rights relating to privacy and job security. With respect to workplace privacy, the Fourth Amendment to the U.S. Constitution prohibits unreasonable "searches." In 1989, the Supreme Court, considering the issue of workplace drug testing for the first time, concluded that a public employer taking a blood, urine, or breath specimen for the purpose of alcohol and other drug testing (or testing conducted by a private employer at the request of the Government) constitutes a search under the Fourth Amendment because it implicates significant privacy concerns. The Court further held that the determination of whether such testing is "reasonable" and therefore constitutionally valid, requires a balancing of the degree of intrusion on the individual's privacy interest against the promotion of the employer's legitimate interests.
- Based on this balancing test, the Courts favor employee testing that is based on reasonable suspicion of alcohol or other drug use.
- Avoid legal problems by using procedures that are clear, fair, consistent, and documented in a written policy. Employment decisions based on a test result can be contested. It will be to your advantage to have a detailed policy and to understand the protections that are available to you.
- The use of a MRO would provide the employer with a medically qualified interpretation of a positive test result, which would be defensible in a court of law.

THE BENEFITS OF GOING DRUG - FREE

Can I save money by becoming a drug-free workplace?

Any employer who takes proactive steps to keep drugs and workers using drugs out of the workplace will save money simply because 47% of all workplace accidents are alcohol-related (reported by the National Institute of Drug Abuse and Blue Cross/Blue Shield). The fewer accidents that occur in your workplace, the lower your workers' compensation insurance. Merely taking a proactive stance to eliminate drugs from the workplace will produce a safer workplace, reduce workdays lost as a result of work accidents and eventually lower workers' compensation premiums.

Every employer is protected from the full cost of a workplace accident that is clearly and undeniably a result of the injured worker working under the influence of drugs or alcohol. If an injured worker tests positive for drugs or alcohol, as reported by a MRO, at the time of the accident, workers' compensation indemnity payments will be denied. However, under ordinary circumstances, if the injured worker can demonstrate that the accident was not related to the presence of drugs (for instance, if a heavy piece of equipment falls on the worker through no fault of his or her own), he or she is still entitled to workers' compensation benefits.

If, in addition to taking steps to eliminate drugs from the workplace, an employer develops a written drug-free workplace policy and becomes a certified drug-free workplace, additional benefits can be realized:

- All employees become aware of the importance of safety in the workplace and will benefit from a safer work environment.
- When a worker is injured at work, he or she must submit to a drug test or forfeit workers' compensation payments.
- If drugs are found in the worker's system above threshold levels, the injured

worker is not entitled to indemnity if the impairment caused the accident.

How exactly does my workplace become drug-free?

To learn all the ins and outs of becoming a drug-free workplace, you can contact the Department of Industrial Relations, Workers' Compensation Division to obtain a complete copy of the Law (Alabama Act 95-535) and Rules governing a drug-free workplace. These will guide your organization in developing a written drug-free workplace policy which must be shared with all present and prospective employees. The Law and Rules contain the following information and more.

There are certain practices and policies which shall be contained in a drug-free workplace policy in order to qualify as a certified drug-free workplace. These are:

- Five types of drug testing:
 - All candidates offered jobs shall be tested before they are hired, although they may begin work pending the results of the drug test.
 - Drug tests shall be conducted following any observed behavior creating "reasonable suspicion." These behaviors shall be defined in the policy but must include causing, contributing to, or being involved in a workplace accident; being observed using drugs at work; work deterioration.
 - Post-rehabilitation/follow-up testing shall occur once per year for at least two years if the employer has sent an employee to drug rehabilitation treatment.
 - If you ordinarily require annual physical fitness-for-duty examinations, they shall include drug testing.
 - Post-accident testing after every on-the-job accident or injury which resulted in a loss of work time.
- Sanctions and consequences for drug use shall be spelled out in the policy. These sanctions can vary from company to

company but they shall be the same for all employees within a company. They can vary from recommending treatment, requiring treatment as a necessary condition to continue employment, to termination.

- A list of places an employee can go voluntarily for treatment or the name of the company's Employee Assistance Program shall be provided.
- An employee who comes forward voluntarily to request treatment may not be terminated for requesting help.
- An assurance shall be provided regarding the confidentiality of test results as well as information about prescription drugs provided by the employee.
- The employee's right to challenge the results of a drug test shall be spelled out.
- The name of the testing laboratory certified by the National Institute on Drug Abuse or The College of American Pathologists you will be using shall also be included.
- Employees shall be aware that you will be working with a Medical Review Officer (MRO) who shall be responsible for the interpretation of all positive test results. The MRO shall contact the employee if there are positive results and permit the employee five days to explain any test results.
- A list of drugs for which you will be testing shall be included as well as a list of other drugs which may affect test results. (These lists are contained in the Law mentioned above.)
- The effective date of the program shall be included.
- Initial testing shall not begin until 60 days after the effective date of the program unless your company had some type of testing program in place before 7/1/96. This gives employees a chance to step forward and request help.

Other practices and policies which you should consider including in a drug-free workplace program are:

- Involving employees in the development and implementation of the program.
- How the program will be presented to and publicized with new and existing employees.
- Random testing of existing employees.
- Requiring employees to sign an agreement about drug use and specifying consequences for not signing the agreement.

If you are individually self-insured, your savings will be realized through reduced incidence of accidents.

Problems that may occur:

Rules can often be confusing. After reading Code of Alabama, 1975, §§25-5-330 through 25-5-340 and the Rules, you may feel a little confused about how to start developing your program or what to include in your policy. You can contact your agent, carrier or self-insurance fund for assistance in developing your program.

Once you implement your program and begin drug testing, you may be surprised that some valuable employees may test positive for drugs. If you don't treat all employees testing positive exactly the same and in a manner consistent with your written policy, you may be risking a discrimination suit. So be sure you are comfortable with the sanctions you write into your policy for all employees, not just the troublesome ones.

When developing your sanctions, consider the impact of those sanctions on your business. Be aware that other companies implementing

drug-free workplace programs have found that 20-50% of their employees actually test positive for drugs. In fact, some companies have found that employees voluntarily resign in the face of continued employment in a drug-free workplace.

Firm and consistent implementation of sanctions is essential for a successful program. The payoff will come in a safer

workplace for all employees and reduced workers' compensation losses for you, the employer.

Every employer is protected from the compensation costs of a work-place accident that is clearly and undeniably a result of the injured worker working under the influence of drugs or alcohol, since indemnity payments are not made if the impairment caused the accident.

EMPLOYER'S LETTERHEAD

DRUG-FREE WORKPLACE SUBSTANCE USE POLICY AND PROCEDURES

EFFECTIVE DATE:

1. GENERAL POLICY

Practical experience and research has proven that even small quantities of narcotics, abused and nonabused prescription drugs or alcohol may impair judgment and reflexes. Even when not readily apparent, this impairment can have serious results, particularly for employees operating vehicles or potentially dangerous equipment. Drug-using employees are a threat to co-workers and themselves, and may make costly errors. For these reasons, (*Employer's Name*) has adopted a policy that all employees must report to work without any detectable presence of alcohol and/or any detectable drug metabolite, unless used as prescribed by a physician. This policy will be enforced to provide a safe workplace for all employees. Employees should understand that a positive drug or alcohol test is not a necessary prerequisite to disciplinary action, if this policy or any other work rule has been violated.

2. DEFINITIONS:

- A. **Alcohol** is ethyl alcohol or spirits of wine, from whatever source or by whatever process produced.
- B. **Breath Alcohol Concentration (BrAC)** is the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath.
- C. **Confirmation Test or Confirmed Test** is a second analytical procedure used to identify the presence of a specific drug or metabolite or alcohol in a specimen. The confirmation test shall be different in scientific principle than that of the initial test procedure. The confirmation method shall be capable of providing requisite specificity, sensitivity, and quantitative accuracy.
- D. **Drugs** as used in this policy include illegal use of controlled substances, drugs which are not legally obtainable, or the improper use of prescriptions. Unless otherwise stated, this term refers to amphetamines, cannabinoids, phencyclidine (PCP), methadone, opiates, cocaine methaqualone, barbiturates, benzodiazepines, propoxyphene, or a metabolite of any of these substances.
- E. **Evidential Breath Testing Device (EBT)** is used for alcohol testing which has been approved by the National Highway Traffic Safety Administration (NHTSA) and placed on NHTSA's "Conforming Products List of Evidential Breath Measurement Devices."
- F. **Medical Review Officer (MRO)** is a licensed physician (medical doctor or doctor of osteopathy), certified by either the American College of Occupational and Environmental Medicine or The American Association of Medical Review Officers, responsible for receiving laboratory results generated by an employer's drug testing program.

The MRO shall have knowledge of substance abuse disorders and appropriate medical training to interpret and evaluate an individual's confirmed positive test, medical history, and other relevant biomedical information.

- G. **Prescription Medication** (Prescription Drug) is a drug or medication lawfully prescribed by a physician for an individual and taken by that individual in accordance with the prescription.
- H. **Safety Sensitive Functions** usually include positions that involve any of the following: national security; health or safety; functions that require a high degree of trust and confidence; operation of company vehicles, machinery, or equipment (the mishandling of which may place fellow employees or the general public at risk of serious injury, or the nature of which would create a security risk in the workplace); or the handling of hazardous material. **NOTE:** If the employer does not have any job classifications that would meet this definition, do not include any references to safety sensitive functions in the drug and alcohol policy.
- I. **Substance** is drugs or alcohol.
- J. **Substance Test or Test** is any chemical, biological, or physical instrumental analysis administered for the purpose of determining the presence of a drug or alcohol.

3. DRUG USE/DISTRIBUTION/POSSESSION:

All employees are prohibited from possessing, distributing, manufacturing, or having a detectable presence of any drug substance, abused prescription drugs or any other mind altering or intoxicating substances in their system while at work or on duty.

4. ALCOHOL USE/POSSESSION:

All employees are prohibited from possessing, drinking, or having a detectable presence of alcohol in their body while at work or on duty. Evidential breath testing devices (EBTs) on the National Traffic Highway Safety Administration Conforming Products List will normally be used to determine BrAC. When using EBTs the Department of Transportation (DOT) 49 Code of Federal Regulation (CFR) Part 40 procedures shall be followed in administering and documenting the BrAC test.

5. OFF-DUTY CONDUCT:

Off-duty use of drugs, alcohol or any other prohibited substances which results in impaired work performance, which may include absenteeism, tardiness, poor work performance, damage to the employer's reputation, or inferior quality of work, is prohibited.

6. PRESCRIPTION MEDICATIONS:

The proper use of medication that is legally prescribed by a physician is not prohibited. Employees performing duties in (*list safety sensitive functions*) shall notify their supervisor, whenever a prescription medication is taken.

7. SUBSTANCE USE TESTING PROGRAM:

A. Conditions for which testing shall be conducted.

I. Pre-Employment Testing shall be required of all applicants (*may limit applicants to select justified job classifications*) that receive an offer of employment. Prior to testing, the applicant shall be afforded the opportunity to voluntarily sign a Substance Use Testing Consent Form. If the applicant refuses to sign the previously named consent form, consideration for employment shall be withdrawn. If an applicant tests positive for the use of drugs or alcohol, consideration for employment shall be withdrawn. The applicant has five days to contest or explain a confirmed positive test after written notification of such result from the employer. It is the current use of alcohol and drugs, not the past history, that prevents the applicant from being accepted for employment. **NOTE MAY ADD:** The applicant that tested positive may, after a period of at least six months, seek employment with Employer's Name, but the applicant must present themselves free of substance as evidenced by Employer's Name Pre-Employment Testing.

II. Reasonable Suspicion Testing shall be required when it is believed that an employee is using or has used drugs or alcohol in violation of (Employer's Name) policy. Testing shall be based upon specific objectives and articulable facts and reasonable inferences as identified on the "Reasonable Suspicion Report Form." Such facts and inferences may be based upon, but not limited to, the following:

- Direct observation of substance abuse or of the physical symptoms or manifestations of being impaired due to substance use.
- Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance.
- A report of substance use provided by a reliable and credible source.
- Evidence that an individual has tampered with any substance use test during his or her employment with the current employer.
- Evidence that an employee has used, possessed, sold, solicited, or transferred drugs while working or while on the premises of the employer or while operating the employer's vehicle, machinery, or equipment.
- Causing or contributing to a workplace accident.

The supervisor requesting testing shall complete, explain in detail the circumstances and evidence warranting testing, and sign the "Reasonable Suspicion Report Form" at the time testing is requested, if feasible, but within 24 hours of testing in any event. The supervisor should have the corroboration of another supervisor, when possible, before the employee is requested to be tested. In the absence of another supervisor, another employee may be requested to witness the observation and the "Reasonable Suspicion Report Form."

If use is suspected, the employee will be transported to the collection site for testing. Under no circumstance shall the employee be permitted to drive if the employee appears to be impaired, disoriented, or confused.

III. Routine Fitness-For-Duty Testing shall be a part of all scheduled medical examinations for employees in *(list the job classification that require routine scheduled medical examination, if none then skip this type of test.)*

IV. Post-accident Testing shall be conducted when an employee causes or contributes to any accident resulting in injury requiring more than simple first-aid treatment, damage to company property in excess of *(specified dollar amount)* of damage, or when the employee causes or contributes to a loss-time accident. For alcohol testing, the employee shall be tested within eight-hours of the accident. Drug testing shall be conducted within 32 hours of the accident.

V. Post Rehabilitation Testing shall be conducted at least once a year during a two-year period after an employee returns to work upon the completion of rehabilitation related to substance use. If an employee voluntarily requests rehabilitation, Post Rehabilitation Testing may not be required, but any employee who receives rehabilitation as the result of a required employer substance use test shall be subject to Post Rehabilitation Testing. **NOTE:** The employer must decide if the employee will be terminated, or retained with rehabilitation offered. The employer may offer a second chance for employees testing positive. If so, then the employer needs to describe the conditions when a second chance will be afforded the employee and the employee's responsibilities. The employer should give thought to the possibility of a long-term employee testing positive and the potential cost of replacement.

VI. Random Testing is optional at the employer's discretion. If the employer opts, then testing should be conducted on a monthly/ quarterly (choose one) basis. All employees regardless of position should be subject to random testing. The employer should pre-select a percentage of the total work force that will be tested over the course of a year. This percentage should be stated in the employer's policy and the number of employees selected for testing should equal that percentage at the end of the year.

B. Specimen Collection and Analysis

Specimens shall be collected in a manner that will afford the individual privacy, yet be reasonably calculated to prevent substitution or adulteration of the specimen. The donor will be given the opportunity, after specimen collection, to record any information considered relevant to the test, current or recently used prescription or nonprescription medication or other medical condition, on the back of the donor's copy of the chain of custody control form.

The employee/applicant shall observe the collector prepare the chain of custody control form and the specimen for shipment. The employee/applicant shall initial and/or sign the appropriate labels and control form for transporting the specimen as verification of the collector preparation of the control form and specimen.

The *(Identify the laboratory by name and address)* will analyze all specimens. All initial tests having a positive result shall be confirmed. The laboratory will forward the results of all

tests to (state the MRO's name), (Employer's Name) medical review officer (MRO).

The MRO will attempt to contact the donor within 72-hours of notification to ascertain if there is a medical reason for a positive result. If the MRO cannot contact the donor within 72-hours, the test will be reported to the employer as positive. The employee/applicant may request another analysis of the original specimen at his or her own expense. If a medical reason caused a positive test result and would not affect the employee's ability to perform his or her duties, the MRO will report the test to the employer as a negative.

C. Sanctions.

An employee who voluntarily admits to a drug or alcohol problem prior to being requested to submit to a substance use test may not be terminated for requesting help.

The employee has five days to contest or explain a confirmed positive test after written notification of such result from the employer.

Any employee testing positive may be disciplined. **NOTE:** It is the employer's decision as to what action is necessary, i.e., termination, suspension without pay, rehabilitation, etc. You are encouraged to recognize that the employee may or may not be a valued one, but your actions should be basically consistent and legally sound regardless. If termination is the choice, so state. If suspension is the first option, then state the length and any testing requirements prior to return to work. Suspension could be used for the first or second violation, but the length of suspension should be varied accordingly. Also, you should require the employee to sign a statement advising him of the conditions of the suspension and what actions would be taken for further violations of your policy. Rehabilitation may be offered initially or for a subsequent violation to an employee. Again, detail the conditions of the rehabilitation and the requirements that will be placed on the employee before return to the workplace will be permitted. You may also consider a "Last Chance Agreement" with the employee.

To assist us in providing a safe and healthy workplace, a resource file of information on various means of employee assistance in the community, including but not limited to drug and alcohol abuse programs, is maintained in (insert the location). This information will be distributed to employees for their confidential use.

Any employee who refuses to submit to testing or who refuses to cooperate shall be
NOTE: As in the above paragraph the employer needs to choose an appropriate course of action.

According to Code of Alabama, 1975 Section 25-5-51:

1. No compensation shall be allowed for an injury due to the injured employee being intoxicated from the use of alcohol or being impaired by illegal drugs, if the intoxication or impairment caused or contributed to the accident.

2. No compensation shall be allowed if the employee refuses to submit to or cooperate with a blood or urine test.

NOTE: Under the provisions of Code of Alabama, 1975 Section 25-4-78, an employee may be denied unemployment benefits if the employee is terminated for violating the employer's policy. If this statement is added to the employer's policy, the policy will need to be reworded to satisfy the requirements of the above stated Section which mandates the use of DOT 49 CFR Part 40.

8. EDUCATION AND TRAINING

A. All employees shall semiannually receive one hour of education which will include at a minimum the following subjects:

- I. An explanation of the disease model of addiction;
- II. The effects and dangers of commonly abused substances in the workplace; and
- III. (Employer's Name) policy and procedures regarding substance use.

B. Supervisors shall receive an additional two hours of annual training which will include at a minimum the following subjects:

- I. How to recognize signs of employee substance abuse;
- II. How to document and corroborate signs of employee substance abuse; and
- III. How to refer substance abusing employees to the proper treatment providers.

9. CONFIDENTIALITY OF INFORMATION

All information, interviews, reports, statements, memoranda, and test results, written or otherwise, received through (Employer's Name) substance use testing program shall be held as confidential communications by the (Employer's Name), MROs, laboratories, drug and alcohol rehabilitation programs, employee assistance programs, and their respective agents. These communications may be used or received in evidence, obtained in discovery, or disclosed in any civil or administrative proceeding. However, information on test results shall not be released or used in any criminal proceeding against the employee or applicant. Release of such information under any other circumstance shall be solely pursuant to a written consent form signed voluntarily by the individual that was tested, unless the release is compelled by an agency of the state or a court of competent jurisdiction or unless deemed appropriate by a professional or occupational licensing board in a related disciplinary proceeding.

COMPANY LETTERHEAD

POLICY STATEMENT

Effective (DATE)

Employer's Name recognizes that our employees are our greatest asset. Our goal is to provide the best possible product and service to our customers. Our employees are the key to achieving this goal. It is important that every employee of the Company understand the dangers of substance use and be aware of state and/or federal requirements concerning substance use. The Company's policy and procedures are not a contract of employment. The Company reserves the right to depart from this policy and procedures where management deems it is appropriate, and all employees are at will employees. Except where specifically prohibited by law, the guidelines contained within the policy and procedures may be changed by management at any time. Employees covered by the Company's policy and procedures will be informed of any changes.

POLICY OBJECTIVES

1. To create and maintain a safe, drug-free working environment for all employees.
2. To encourage any employee with a dependence on or addiction to alcohol or other drug to seek help in overcoming the problem.
3. To reduce problems of absenteeism, tardiness, carelessness, and/or other unsatisfactory matters related to job performance.
4. To reduce the likelihood of incidents of accidental personal injury and/or damage to customers, visitors, or property.
5. To comply with contractual obligations of customers and to meet the guidelines found in Code of Alabama, 1975, §25-4-78 (*ADD THIS SECTION IF DESIRING TO TAKE ADVANTAGE OF THE UNEMPLOYMENT COMPENSATION DIVISION'S PROGRAM*), §25-5-51, and §§25-5-330 through 340. (If applicable add to this list 49 C.F.R. Part 40 and/or the Federal Drug-Free Workplace Act.)
6. To minimize the likelihood that Company property will be used for illicit alcohol and/or drug activities.
7. To protect the reputation of the Company and its employees within the community.

Substance use can be a serious threat to the Company, its employees and customers. Though the percentage of substance abusing employees may be relatively small, practical experience and research indicate that appropriate precautions by the Company are necessary. It is the belief of the Company that the benefits derived from these policy objectives will outweigh the potential inconvenience to employees. The Company earnestly solicits the understanding and cooperation of all its employees in the implementation and enforcement of this policy.

NOTE: If your company is subject to the requirement of the Drug-Free Workplace Act of 1988 (your company has a grant or contract with the federal government) add the following

statement.

As a condition of employment, employees must abide by the terms of Employer's Name Substance Use Policy and must notify Employer's Name in writing of any conviction of a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.

The Company requires that all employees report to work without any detectable presence of alcohol or a drug metabolite in their body systems. Employees shall not report for work or remain on duty requiring (list specific safety related job tasks or other tasks that the employer deems necessary; NOTE: This position should pass the legal criteria for safety sensitive functions) except when the use is pursuant to the instructions of a physician who has advised the employee that the substance will not adversely affect the employee's ability to perform the job tasks in a safe manner.

No employee shall use alcohol while on duty. (NOTE: If the employer has functions that meet the legal criteria of safety sensitive, the employer may add the following: No employee shall perform any job-related duties within (Number) hours after using alcohol.) The Company prohibits employees from using, possessing, manufacturing, distributing or making arrangements to distribute drugs or alcohol while at work or on Company property.

Outside conduct of a substance use-related nature which affects an employee's work, the Company's relationship with any customer, or reflects negatively on the Company is prohibited.

NOTE: If the employer has functions that meet the legal criteria for safety sensitive functions, add this paragraph. Employees in the (list job classifications that meet safety sensitive definition) must inform their supervisor when they are legitimately taking medication which may affect their ability to perform their assigned job tasks or that may place the employee in violation of the Company's policy and procedures.

The Company requires that all employees submit, at any time an employee is on duty or at any time an employee may be called to be on duty, to drug and/or alcohol testing to determine the presence of prohibited substances. Employees may be required to submit to the following types of testing, as defined in (Employer's Name) Substance Use Policy: Routine-Fitness for Duty if required, Reasonable Suspicion, Post Accident, Post Rehabilitation (Follow-up) and Random. An employee's refusal to submit to a requested specific substance use test or failure to cooperate with such testing shall constitute an act of insubordination and may subject the employee to disciplinary action up to and including termination.

All job applicants will be requested to submit to alcohol and/or drug testing as a condition of employment. **NOTE:** May restrict applicant testing to select job classifications that should be justified based upon reasonable classification of positions. If so, then word to require only those classifications to submit to testing.

To assist us in providing a safe and healthy workplace, a resource file of information on various means of employee assistance in this community, including but not limited to drug and alcohol use programs, is maintained in (insert the location). This information will be distributed to employees for their confidential use.

PRE-EMPLOYMENT DRUG TESTING AGREEMENT

I hereby consent to submit to an urinalysis and/or other tests as shall be determined by (employer's name) in the selection process of applicants for employment for the purpose of determining substance use.

I agree that (employer's name) may collect these specimens for the tests and forward them to (testing laboratory designated by the company) for analysis.

I further agree to, and hereby authorize, the release of the results of said tests to (employer's name) designated Medical Review Officer (MRO), and from the MRO to the employer. Positive results may be reported to the employer by the MRO.

I understand that the current use of drugs and/or alcohol shall prohibit me from being employed by (employer's name).

I further agree to hold harmless this company and its agents (Name of Laboratory and Medical Review Officer) from any liability arising in whole or in part from the collection of specimens, testing, and use of the results from said tests in connection with the company's consideration of my application for employment.

I further agree that a reproduced copy of this pre-employment consent and release form shall have the same force and effect as the original.

I have carefully read the foregoing and fully understand its contents. I acknowledge that my signing of this consent and release form is a voluntary act on my part and that I have not been coerced by anyone to sign this document.

APPLICANT'S PRINTED NAME: _____

APPLICANT'S SOCIAL SECURITY NUMBER: _____

APPLICANT'S SIGNATURE: _____

DATE: _____

WITNESS' PRINTED NAME: _____

WITNESS' SIGNATURE: _____

DATE: _____

REASONABLE SUSPICION REPORT FORM

NAME OF EMPLOYEE: _____

NAME OF SUPERVISOR: _____

DATE: _____ TIME: _____ OFFICE: _____

NAME OF WITNESS (ES) AND TITLE (S): _____

Disorientation _____ Extremely Nervous _____

Thick, Slurred Speech _____ Unusually Talkative _____

Glassy-Eyed _____ Profuse Sweating _____

Poor Motor Coordination _____ Uncoordinated Gait _____

Sleepiness & Drowsiness _____ Belligerence _____

Jerky Movement of Eyes _____ Staggering Gait _____

Blank Stare Appearance _____ Mood Changes _____

Dilated Pupils _____ Odor of Glue, Paint Solvent _____

Flushed Face, Head, or Neck _____ Poor Perception of Time & Distance _____

Redness Around Nasal Area _____ Use of Sunglasses at Inappropriate Times _____

Tremor of Fingers & Hands _____ Unable to Perform Usual Routine Tasks _____

Unusual Body Position _____ Odor of Burnt Rope _____

Muscle Rigidity _____ Inability to Remember _____

Hearing and/or Seeing Things _____ Other, Explain Below _____

Describe in detail the events which led to this report and explain your observations checked above. You may write on the back of this form.

EMPLOYER'S LETTERHEAD

**CONSENT FOR RELEASE OF
CONFIDENTIAL INFORMATION**

I _____,
(EMPLOYEE/APPLICANT'S PRINTED NAME) (SOCIAL SECURITY #)

voluntarily give my consent for release of

(PRINT THE INFORMATION TO BE RELEASED)
received through (*Employer's Name*) Substance Use Testing Program to

(PRINTED NAME AND COMPANY/AGENCY OF PERSON TO RECEIVE THE DATA)
for the purpose of _____

(PRINT PURPOSE OF THE DISCLOSURE)

This consent is valid from _____ to _____
MONTH/DAY/YEAR MONTH/DAY/YEAR

I understand that copies of this original form shall have the same force and effect as the original.

(SIGNATURE OF EMPLOYEE/APPLICANT) (DATE SIGNED)

(PRINTED NAME OF WITNESS) (WITNESS' TITLE)

(SIGNATURE OF WITNESS) (DATE SIGNED)

EMPLOYERS LETTERHEAD

EMPLOYER'S NAME **SUBSTANCE USE TESTING** **CONSENT FORM**

I hereby certify that I have reviewed a written copy of (*Employer's Name*) Drug-Free Workplace Policy which was (is) effective DATE. I have been given the opportunity to ask questions regarding this policy. I understand that violation of this policy is cause for disciplinary action, up to and including termination, or disqualification of employment.

I hereby give my voluntary consent for specimen(s) to be collected from me and submitted for drug and/or alcohol testing as a condition of my initial or continued employment. I understand that I will not be forced to submit to any alcohol or drug test, but my refusal to do so shall result in termination of employment or consideration for employment. I further consent to the release of said test results to the (*employer's name*) and the said employer's Medical Review Officer. I understand that these results will be held in strict confidence.

I understand that (*employer's name*) has the right to conduct searches and inspections of any employee's personal effects, clothing, work area, and vehicle for the purpose of determining if such employee or other person is in possession, uses, transports, or conceals any prohibited items and/or substances.

Searches, inspections, and substance use testing as may be required from time to time without prior announcement shall be conducted with concern for the personal privacy of each employee.

I understand that consent and cooperation in these procedures is a condition of employment, and that refusal to consent may result in termination or disqualification from employment.

I authorize the release of any test results to the company's workers' compensation insurer(s), the Alabama Unemployment Compensation Division, or any other government agency investigating my employment or termination.

I understand that copies of this original shall have the same force and effect as the original.

I understand that this agreement in no way limits my rights or
(employer's name) to terminate employment at any time for any reason.

PRINT NAME

SOCIAL SECURITY NUMBER

EMPLOYEE'S (APPLICANT) SIGNATURE

DATE

WITNESS' PRINTED NAME

TITLE

WITNESS' SIGNATURE

DATE

BASIC INFORMATION ON THE LAW

Drug-Free Workplace Policy Law

Federal, state and local laws pertaining to drug-free workplace policies and procedures are complex and subject to frequent changes by legislation and court decision. It is essential to consult your attorney before implementing any policy or practice. However, these materials do not constitute legal advice.

Through the local chapter of the Alabama Bar Association or the American Bar Association, some attorneys in your community may be available to answer specific questions regarding drug-free workplace policies and procedures without charge.

The Drug-Free Workplace Act of 1988

The Drug-Free Workplace Act of 1988 requires all federal grant recipients and federal contractors (where contracts exceed \$25,000) to certify that they shall provide a drug-free workplace. The final rules describing the requirements for such grantees/contractors were published in the Federal Register on May 25, 1990.

Generally, this law required covered employers to:

- Develop and publish a written policy and ensure that employees read and consent to the policy as a condition of employment;
- Initiate an awareness program to educate employees about
 - the dangers of drug abuse;
 - the company's drug-free workplace policy;
 - any available drug counseling, rehabilitation, and employee assistance programs;
 - the penalties that may be imposed upon employees for drug abuse violations;
- Require that all employees notify the employer or contractor within 5 days of any conviction for a drug offense in the workplace;
- Make an on-going good faith effort to maintain a drug-free workplace.
- See page 18 of this booklet for the specific language to include in your policy statement if your company is subject to the requirements of the Drug-Free Workplace Act of 1988.
- The contract and/or grant administration office of the federal department or agency awarding a contract or grant can answer questions about the provisions and requirements of the Drug-Free Workplace Act of 1988.
- See pages 27 and 28 of this booklet for additional national and state resources.

Department of Transportation (DOT) Regulations

The U.S. Department of Transportation (DOT) rule on drug testing regulations became effective in December 1988. The regulation covers several occupations under DOT jurisdiction, including natural gas and pipeline workers, motor carrier workers, aviation workers and railroad workers. Employers with transportation positions covered by DOT must test job applicants. Employees are to be tested during a routine physical, on a random basis, upon reasonable cause and after accidents. The DOT has established an Anti-Drug Information Center (ADIC). This computer-based system can respond to telephone calls, facsimile, or modem. The system will provide callers with model drug rules and detailed information, interpretation and advice on DOT regulations. Contact 1-800-CAL-DRUG.

The Americans with Disabilities Act of 1990 (ADA)

This Act, effective July 1992, prohibits discrimination against "qualified people with disabilities" and limits an employer's ability to inquire into an employee's or job applicant's medical history. It does, however, permit drug testing and does not bar employees from prohibited alcohol abuse or illegal drug use in the workplace. Under the ADA, an employer may require job applicants and employees to pass a drug test as a condition of employment. Although the Act does not protect certain illegal substance abusers and alcoholics who cannot safely perform their jobs, it does protect those who have been rehabilitated or who are participating in supervised rehabilitation programs and not currently using drugs.

What Exactly is "Current" Drug Use?

- According to the Equal Employment Opportunity Commission (EEOC), "Current drug use means that the illegal use of drugs occurred recently enough to justify an employer's reasonable belief that involvement with drugs is an on-going problem. It is not limited to number of days of use. It is determined on a case-by-case basis."
 - A positive drug test conclusively proves current use, but a test can be conducted only to determine "illegal" drug use; a person who tests positive for a lawfully used prescription drug cannot be discriminated against.
 - In the case of job applicants, an employer cannot ask what prescription drugs a person is taking before making a conditional offer of employment.
 - The EEOC suggests that employers can avoid potential liability by conducting pre-employment drug tests after making an offer; if a person tests positive with illegal drugs, the employer may withdraw the offer.
 - The following are protected by the ADA, i.e., an employer cannot discriminate based on these characteristics:
 - Illegal substance abusers and alcoholics who have successfully completed a rehabilitation program.
 - Those who are participating in a supervised rehabilitation program.
 - Those who, based on hearsay only, are believed to be an illegal drug user.
 - Furthermore, an alcoholic is considered "an individual with a disability" and cannot be discriminated against unless their alcohol use impairs performance or conduct to the extent that they are not qualified.
- For more information about the ADA requirements affecting employment, contact the Equal Employment Opportunity Commission at 202-663-4900.
- (Source: Institute for a Drug-Free Workplace)

NATIONAL AND STATE RESOURCES

NATIONAL TECHNICAL ASSISTANCE

Center for Substance Abuse Prevention Workplace Helpline **1-800-967-5752**

The National Institute on Drug Abuse toll-free service is operated 9:00 a.m. - 8:00 p.m. EST. Telephone consultation is available for business owners, managers, and union leaders on the development and implementation of comprehensive drug-free workplace programs. These counselors can put you in touch with local resources.

National Clearinghouse for Alcohol and Drug Information **1-800-729-6686**

This toll-free service has information specialists available on all aspects of substance abuse - from videos and prevention materials to specific program descriptions, resources in our state, and the latest research results. Many publications and educational materials are available **free** from the Clearinghouse. As these publications are in the public domain, you may reprint them under your logo without permission.

Substance Abuse and Mental Health Services Administration (SAMHSA) **(301) 443-6014**

This service provides advice and referrals to individuals about the availability of drug and alcohol treatment services, including referrals to programs for those who cannot pay.

Department of Transportation's Anti-Drug Information Center **1-800-225-3784**

This system is designed to respond to inquiries regarding the U.S. DOT drug-free workplace regulations for the transportation industry.

Department of Defense **(703) 697-8335**

If your business is subject to the Department of Defense's drug testing regulations, call this number for more information.

Employee Assistance Professionals Association (EAPA) **(703) 522-6272**

EAPA provides information on how to select EAPs, the value they can provide, the theory behind them and how they operate. (EAPA, 4601 North Fairfax Drive, Suite 1001, Arlington, VA 22203)

American Council for Drug Education (ACDE) **1-800-488-DRUG**

ACDE offers information about alcohol and other drug abuse prevention to employers and employees, as well as parents, children, educators and students.

Drugs Don't Work Partnership **(703) 706-0560**

The coalition works with businesses to implement locally-run "Drugs Don't Work" programs.

Partnership for a Drug-Free America (PDFA) **(212) 922-1560**

PDFA provides employers with prevention-oriented ads, posters, tapes and other materials designed to educate employees and supervisors about the effects of workplace drug abuse.

Workplace Helpline **1-800-WORKPLACE**

The helpline, also operated by CSAP, provides individualized technical assistance to businesses, industries and unions in the development and implementation of comprehensive workplace substance abuse programs.

A2Z Alcohol & Drug Abuse-Addiction **1-800-274-2042**

Al-Anon/Alateen Family Group Headquarters **1-800-356-9996**

Alcoholics Anonymous World Service **(212) 870-3400**

American Council on Alcoholism Helpline **1-800-527-5344**

800 Cocaine-Information and Referral Hotline **1-800-262-2463**

Nar-Anon Family Group Headquarters **(310) 547-5800**

Narcotics Anonymous **(818) 773-9999**

National Council on Alcoholism and Drug Dependency Helpline **1-800-622-2255**

Substance Abuse Institute **(301) 431-1239**

Substance Abuse Program Administrators Association **1-800-672-7229**

STATE RESOURCES

Alcohol & Drug Abuse 24-Hour Help Line & Treatment

1-800-888-9383

Alanon/Alateen

(334) 281-3861

Bradford-Parkside

1-800-333-1865

Drug Dependence Information & Referral

(334) 262-7401

Hill Crest Behavioral Health Services

1-800-239-5824